

EXHIBIT E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CIN-Q AUTOMOBILES, INC., and
MEDICAL & CHIROPRACTIC CLINIC,
INC., Florida corporations, individually
and as the representatives of a class of
similarly-situated persons,

Plaintiffs,

v.

Case No. 8:13-cv-1592-17AEP

BUCCANEERS LIMITED
PARTNERSHIP and JOHN DOES 1-10,

Defendants. _____/

AFFIDAVIT OF PHYLLIS J. TOWZEY

COUNTY OF PINELLAS)
STATE OF FLORIDA)

1. I am over the age of 18, I have personal knowledge of the facts set forth in this affidavit and I am competent to testify with respect to the facts alleged herein. If called to testify in court, my testimony would be as follows:

2. I am the owner of the Law Offices of Phyllis J. Towzey, P.A., located at 475 Central Avenue, St. Petersburg, FL 336701.

3. I have been licensed to practice law in the State of Florida since 1987.

4. During July and August of 2009, my law firm maintained a facsimile machine for the sending and receiving of correspondence and court pleadings in connection with my law practice. The telephone number assigned to my law firm's



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facsimile machine was (727) 892-9925, the service was registered in the name of my law firm and the billing for that service was paid for by my law firm. That telephone service was provided by Verizon.

5. On two separate occasions—July 14, 2009, and again on August 17, 2009—someone on behalf of the Buccaneers Limited Partnership, d/b/a the Tampa Bay Buccaneers (“Tampa Bay Buccaneers”), sent a facsimile (“the Fax”) to my law firm’s facsimile machine that is connected to the telephone number (727) 892-9925.

6. The Fax my law firm received was an advertisement attempting to sell football tickets.

7. Buccaneers Limited Partnership, d/b/a the Tampa Bay Buccaneers, had the Fax sent to my law firm’s facsimile machine without my prior express invitation or permission.

8. Buccaneers Limited Partnership, d/b/a the Tampa Bay Buccaneers, has never had an established business relationship my law firm.

9. I was tired of receiving unsolicited faxes that used up my firm’s ink cartridge, interrupted my day by forcing me to review unwanted and unasked for advertisements, and delayed our receipt of fax communications that *were* invited.

10. On August 20, 2009, I authored a letter (hereafter “August 20 Letter”) to Brian A. Ford, Registered Agent, Tampa Football Corporation, One Buccaneer Square, Tampa, FL 33615 and sent it to his attention *via* Federal Express. A true and correct copy of the August 20 Letter is attached as **Exhibit A**.

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April 2, 2014

11. In the August 20 Letter I warned Mr. Ford as follows:

“A federal law enacted in 1991, the Telephone Consumer Protection Act (“the Act”), provides as follows:

‘It shall be unlawful for any person within the United States . . . to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine’ 47 U.S.C. § 227(b)(1).

“The Act also provides that ‘[a] person or entity may . . . bring in an appropriate court . . . an action . . . to receive \$500 in damages for each such violation.’ If the court finds that the defendant ‘willfully or knowingly violated this subsection’ of the regulations, the court may triple the damage award. See 47 U.S.C. § 227(b)(3).”

12. I further advised Mr. Ford of the consequences of sending the unsolicited advertisement to me by using my firm’s facsimile machine in the following words:

“By sending the Fax to me, Tampa Bay Buccaneers violated 47 U.S.C. § 227(b)(1) and is now liable to pay damages to me of not less than \$500 for each of the two occurrences under 47 U.S.C. § 227(b)(3). I believe Tampa Bay Buccaneers willfully or knowingly violated the Act (which has been widely publicized), and is therefore liable to pay me \$1,500 for each of the two occurrences – a total of \$3,000.”

13. On behalf of my law firm in the August 20 Letter I proposed a settlement of the claim, but warned as follows:

“If this matter is not resolved by payment of \$1,000 by the deadline set forth above, it is my intention to file an action in federal court in the Middle District of Florida for violations of the Act, seeking treble damages (\$1,500 for each of the two occurrences), attorney’s fees and the costs of the action.”

14. I know my August 20 Letter was received by the Tampa Bay Buccaneers because I confirmed through Federal Express tracking that it had been received, and it was not returned to me.

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April 2, 2014

15. In addition, I received a telephone call from Manuel Alvare, who identified himself as the General Counsel for the Tampa Bay Buccaneers, and wished to discuss the subject matter of my letter. He told me that my letter to Mr. Ford had been forwarded to him for his attention, and that he was contacting me in response to that letter.

16. Mr. Alvare told me in that conversation that the Fax had been sent by an entity he identified as FaxQom and that he was looking into how that had occurred. He apologized to me for any inconvenience or annoyance I had suffered as a result of the unsolicited faxes sent to my office, and said he would take steps to ensure that it did not happen again.

17. When I raised the issue of monetary damages, Mr. Alvare told me he believed FaxQom was responsible for any damages because FaxQom had sent the Fax.

18. Following the receipt of my August 20 Letter by Mr. Alvare and our subsequent telephone conversation, I received a facsimile from an individual who identified himself as Steve Simms representing that he was associated with an entity known as FaxQom. Mr. Simms denied being involved in the sending of the Fax to my law firm's facsimile machine. I responded to the letter from Mr. Simms with my letter dated September 11, 2009 (hereafter "September 11 Letter"), which I had to send by facsimile because the letter from Mr. Simms did not include a physical address, nor was any business address mentioned anywhere on FaxQom's website. A true and correct copy of the September 11 Letter is attached as **Exhibit B**.

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April 2, 2014

19. I also sent a copy of the September 11 Letter by facsimile to Manuel A. Alvaré, III, Esq., Tampa Bay Buccaneers Headquarters, One Buccaneer Place, Tampa, Florida 33607, Phone: 813.870-2700, Fax: 813.554-1351.

20. On September 16, 2009, I wrote a letter (hereafter "September 16 Letter") to Mr. Alvare following up on my telephone conversation with him, as well as my August 20 Letter and my September 11 Letter to Mr. Simms. The September 16 Letter was again sent *via* Federal Express. A true and correct copy of the September 16 Letter is attached as **Exhibit C**.

21. In my September 16 Letter I informed Mr. Alvare of the following:

"As you know, I received a letter from a Steven Simms at FaxQuom in which he vehemently denied that it was his company that sent the faxes. Mr. Simms declined to provide a mailing address or a physical address for FaxQuom, and his company's website (www.faxquom.com) likewise furnishes no contact information."


22. I received a telephone call from Mr. Alvare following his receipt my September 16 Letter requesting that I not follow through with my threat to file a lawsuit against the Tampa Bay Buccaneers. Mr. Alvare assured me that he would further investigate this matter with FaxQom, take all appropriate steps to ensure that I did not receive any further unsolicited faxes asking me to purchase Bucs tickets or anything else, and see what he could do to make FaxQom take responsibility for its actions if I agreed to refrain from filing that action.

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April 2, 2014

23. I have never received any compensation from the Buccaneers Limited Partnership, or anyone else on its behalf, for the two Fax transmissions to my law firm facsimile machine.

24. I have not had any involvement with the subject matter addressed in this Affidavit until the morning of Tuesday, March 25, 2014, when I received a telephone call from Attorney Michael Addison inquiring as to my possible complaint to the Tampa Bay Buccaneers about receiving facsimile advertisements for home games for the 2009 season.

25. In response to Mr. Addison's request, I located the copies of my correspondence that had been saved and stored on my computer hard drive, and provided electronic copies of the three letters to him. Those letters are attached as Exhibits A, B and C to this Affidavit.

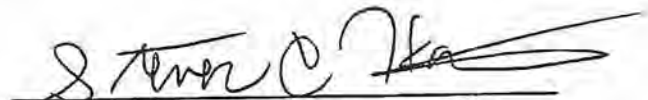


Phyllis J. Towzey

Affidavit of Phyllis J. Towzey
April 2, 2014

STATE OF FLORIDA)
COUNTY OF PINELLAS)

Sworn to and subscribed before me on April 10, 2014, by
Phyllis J. Towzey, who is personally known to me or who produced her
_____ as identification.



NOTARY PUBLIC, State of Florida
Print, Type or Stamp Name of Notary
(Seal)



ADDISON & HOWARD, P.A.
400 N. Tampa St., Suite 1100
Tampa, FL 33602-4714
Tel: (813) 223-2000
Fax: (813) 228-6000
Attorneys for Plaintiffs

/s/ Michael C. Addison
Michael C. Addison
Florida Bar No. 0145579
m@mcilaw.net

and

Ryan M. Kelly
Florida Bar No. 90110
ANDERSON + WANCA
3701 Algonquin Road, Suite 760
Rolling Meadows, IL 60008
Tel: (847) 368-1500
Fax: (847) 368-1501
rkelly@andersonwanca.com

EXHIBIT A

Law Offices
PHYLLIS J. TOWZEY, P.A.
Board Certified Labor & Employment Law

(727) 895-1200
(727) 892-9925 (Fax)

phyllis@towzey.com
www.towzey.com

475 Central Ave
St. Petersburg, FL 33701

August 20, 2009

Via Federal Express

Brian A. Ford
Registered Agent
Tampa Football Corporation
One Buccaneer Square
Tampa, FL 33615

Re: Tampa Football Corporation, Violation of Telephone Consumer Protection Act

Dear Mr. Ford:

On July 14, 2009, and again on August 17, 2009, Tampa Football Corporation on behalf of the Tampa Bay Buccaneers ("Tampa Bay Buccaneers") sent a facsimile ("the Fax") to my facsimile machine that is connected to the telephone number 727-892-9925, which is registered in my name. A copy of the Fax is enclosed. The Fax is an advertisement attempting to sell me football tickets. Tampa Bay Buccaneers sent the Fax to me without my prior express invitation or permission. Tampa Bay Buccaneers and I have never had an established business relationship. Frankly, I am tired of receiving unsolicited faxes that use up my ink cartridge, interrupt my day, and delay my receipt of fax communications that *are* invited.

A federal law enacted in 1991, the Telephone Consumer Protection Act ("the Act"), provides as follows:

It shall be unlawful for any person within the United States . . . to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." 47 U.S.C. § 227(b)(1).

The Act also provides that "[a] person or entity may . . . bring in an appropriate court . . . an action . . . to receive \$500 in damages for each such violation." If the court finds that the defendant "willfully or knowingly violated this subsection" of the regulations, the court may triple the damage award. See 47 U.S.C. § 227(b)(3).

By sending the Fax to me, Tampa Bay Buccaneers violated 47 U.S.C. § 227(b)(1) and is now liable to pay damages to me of not less than \$500 for each of the two occurrences under 47 U.S.C. § 227(b)(3). I believe Tampa Bay Buccaneers willfully or knowingly violated the Act (which has been widely publicized), and is therefore liable to pay me \$1,500 for each of the two occurrences – a total of \$3,000.

Brian A. Ford
August 20, 2009
Page 2 of 2

For information about the Act, see the federal regulations interpreting the Act, and also see the 2001 class action lawsuit, *Nicholson v. Hooters of Augusta, Inc.*, (Richmond County, Georgia, Superior Court case number 95-RCCV-616). In that case, Hooters hired a fax service that sent six unsolicited junk faxes to each of 1,321 fax numbers. In April of 2001, the court ordered Hooters to pay treble damages of \$11,889,000. In another case filed in 2002, Dallas Basketball Limited (the Dallas Mavericks) paid \$650,000 to settle a junk fax class action lawsuit.

To resolve this matter and avoid unnecessary litigation, I am willing to waive my right to seek damages totaling \$3,000 for the two occurrences and will agree not to file a 47 U.S.C. § 227(b)(1) lawsuit against Tampa Bay Buccaneers in exchange for payment of \$500 for each of the two occurrences (a total payment of \$1,000) on or before September 15, 2009.

If this matter is not resolved by payment of \$1,000 by the deadline set forth above, it is my intention to file an action in federal court in the Middle District of Florida for violations of the Act, seeking treble damages (\$1,500 for each of the two occurrences), attorney's fees and the costs of the action.

Demand is hereby made that Tampa Bay Buccaneers immediately cease and desist from sending any facsimiles to me in the future.

Thank you in advance for your attention to this matter.

Sincerely,

Phyllis J. Towzey

EXHIBIT B

Law Offices
PHYLLIS J. TOWZEY, P.A.
Board Certified Labor & Employment Law

(727) 895-1200
(727) 892-9925 (Fax)

phyllis@towzey.com
www.towzey.com

475 Central Ave
St. Petersburg, FL 33701

September 11, 2009

Sent by Fax to number 617-674-2147

Steven Simms
FaxQom

RE: Your fax to my phone fax number of 727 892 9925

Dear Mr. Simms:

In 22 years of business litigation, I have learned to be skeptical of individuals who do not identify their position with a company and also do who not provide the business operating address of the company. Your fax to me had no date, no business address of the company, and you did not provide your identification with the company. The website www.faxquom.com, shows no business address. Are you empowered to act on behalf of FaxQom?

Would you kindly provide me with your position with FaxQom? Is FaxQom a Florida Corporation? What is your business operating address? What is the name of your attorney?

Demand is hereby made pursuant to 47 U.S.C. § 227(b)(1). for FaxQom to remove my fax phone number – 727-892-9925—from all lists you maintain and from all lists you have sold, shared, or distributed to other companies in the past six months. Should my fax number be inundated by junk faxes in the near future I will consider your company responsible.

Sincerely,

Phyllis J. Towzey

Cc: by fax to
Manuel A. Alvaré, III, Esq.
Tampa Bay Buccaneers Headquarters
One Buccaneer Place
Tampa, Florida 33607
Phone: 813.870-2700
Fax: 813.554-1351

EXHIBIT C

Law Offices
PHYLLIS J. TOWZEY, P.A.
Board Certified Labor & Employment Law

(727) 895-1200
(727) 892-9925 (Fax)

phyllis@towzey.com
www.towzey.com

475 Central Ave
St. Petersburg, FL 33701

September 16, 2009

Via Federal Express

Manny Alvare, Esq.
Tampa Bay Buccaneers Headquarters
One Buccaneer Place
Tampa, FL 33607

Re: Violation of Telephone Consumer Protection Act

Dear Mr. Alvare:

I'm following up on our conversation several weeks ago regarding the unsolicited advertisements for the Tampa Bay Buccaneers sent to my fax machine in violation of the federal Telephone Consumer Protection Act.

You advised me that fax advertisements for the Bucs are sent by an outside vendor, "FaxQuom," and told me you were looking into how this occurred.

As you know, I received a letter from a Steven Simms at FaxQuom in which he vehemently denied that it was his company that sent the faxes. Mr. Simms declined to provide a mailing address or a physical address for FaxQuom, and his company's website (www.faxquom.com) likewise furnishes no contact information.

If I can provide any additional information that would assist you in obtaining indemnification from FaxQuom, please let me know. In the meantime, however, realize that it is irrelevant to me whether FaxQuom or another vendor actually sent the fax; the fax was clearly sent on behalf of the Tampa Bay Buccaneers, and expressly solicits the purchase of tickets for Bucs games. Accordingly, the law holds your company responsible for the actions of its agent.

Ironically, I learned of this law when one of my own clients, a small business located in Pinellas County, was sued by another party for sending unsolicited faxes advertising the company's services. After researching the matter, I determined that if a fax was indeed sent, there is simply no defense; my client was liable for treble damages and attorney's fees.

I have contacted you directly (rather than using the attorney who sued my own client) to provide an opportunity for you to resolve this matter by paying only the statutory amount of \$500 per violation, rather than treble damages of \$1,500 per occurrence, and attorney's fees.

Manny Alvare, Esq.
September 16, 2009
Page 2 of 2

If I receive payment of \$1,000 within the next ten (10) days, I will waive my right to seek damages totaling \$3,000 for the two occurrences and will agree not to file a 47 U.S.C. § 227(b)(1) lawsuit against Tampa Bay Buccaneers. If it is necessary for me to file suit, however, I will turn the matter over to the attorney who sued my client, and your company will then be liable for his attorney's fees as well.

Thank you in advance for your attention to this matter.

Sincerely,

Phyllis J. Towzey